

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date: **March 12, 2007**

Time: **9:00am**

Place: **Backman Title**

167 E 6100 S, Ste 250

Members

(Attendees = x)

Commission Members

xChairperson, Darwin L. Johnson, *Wasatch* xJoyce W. Clark, *Washington*

xDavid M. Lattin, *Salt Lake*

xGlen W. Roberts, *Utah*

xR. Curt Webb, *Cache*

Department Staff

John E. "Mickey" Braun, Jr.
Ass't Commissioner

xPerri Babalis
AG Legal Counsel

xDarrel Powell
Dir. Market Conduct

Mark Kleinfield
Admin. Law Judge

xGerri Jones
MC Examiner

xSheila Curtis
MC Examiner

xJilene Whitby
PIO/Recorder

MINUTES

I. Welcome and Introductions / Darwin L. Johnson, Chair

All board members were in attendance. Mickey and Mark were absent.

II. Adoption of Minutes of Previous Meeting

It was noted that the time at the bottom of the minutes was incorrect. Instead of 8:30 a.m. it should read 9:00 p.m. Curt **moved** to approve the minutes with the change and Dave seconded it. The vote was unanimous in favor of the motion.

III. Review & Concur with Licensee Report for January & February

Gerri explained that the program was picking up a few renewals from the previous month because the program is set up on a 30 day calendar and the 28 days in February, or a month with 31 days, puts it off schedule. She also notified Cottonwood Title to add escrow to their license. Somehow it has been left off. Sheila noted that the list of agency renewals is not showing lapsed policies for some reason. Mickey and Scott are working on a new report that would include more information. David **moved** to accept the report and Curt seconded it. The vote was unanimous.

IV. Number of Cases Open & Closed

Curt noted that the numbering on the report does not seem to coincide with the date the case was opened. Gerri said that to create the list they included all of the old cases that were put on the list, even those that are now closed and as a result they have not been added chronologically. They will from now on. Some cases are immediately opened and closed for lack of evidence. Sheila – the report does not include old closed cases that have not been worked.

- ❑ Curt asked that next time the total number of opened cases be included on the report.
- ❑ Dave asked that the number of various types of violations also be included, like last month.
- ❑ Joyce asked how the cases are prioritized. Gerri said they were prioritized according to threat to the public, which can change from day-to-day. Some of it depends on what may be happening with the Fraud Division. Darrel noted that one of the people in the office is taking the title calls and seeing if she can help them and if not, do whatever paperwork is needed and directing them to the right person.

V. Review & Concur with Enforcement Case Report

Jilene gave the Stipulation and Order for Atlas Title Insurance Agency, Inc. to Darwin to sign. Mark was out of town and unable to do it. The order has been revised to show the increased forfeiture amount. Perri reviewed the document, found it in order and Darwin signed and returned it to Jilene.

Break 10:25a.m.

Break ended 10:45 a.m.

VI. Old Business

- **Escrow Instructions - Update / Glen**

Glen provided everyone with a draft of the instructions. It has been based on Bruce Mack and Jeff Jensen's escrow instructions. It discloses to the buyer and seller, the two companies involved and notes that documents are to be traded between them. It does not provide for disclosure to the lender.

- ❑ Gerri suggested changing the word "company" to "agent," which is how the code refers to title agencies. David Moore suggested using brackets with an explanation of what name should be put in the space.
- ❑ The Commission decided to insert Jeff's wording regarding the disclosure to the lender.
- ❑ Gerri suggested adding "Agencies and/or" after "Title" on the last page, paragraph 8, 7th line. She also suggested referencing Part 406 instead of 407 of 31A-23a. Glen wondered about deleting entire sentence. Joyce thought it made it clear for the consumer. Curt said it was already stated above. A rule would have to be written that would require the disclosure be signed.
- ❑ David Moore: If an insurer closing letter is issued the agency contract does not give someone the authority to bind the underwriter and if one signs the contract they are in breach of contract. Curt said they needed to be careful about noting in a contract that someone is bound. Glen thought the contract should contain some description of duty or responsibility.
- ❑ The disclosure does not address recording times. Should there be exceptions for electronic recordings? The buyer's side is not getting a copy of the actual recorded deed. Glen suggested wording requiring the delivery of the deed before the recording. Curt suggested sending a copy of the deed after the recording so comparisons can be made. Glen said that they needed to draft something that said: "Deliver the deed or prior to the closing deliver a certified copy to be delivered." Curt added: "And the company isn't required to disburse unless the recorded document conforms with the copy of the agreements."
- ❑ Paul provided the following suggestions.
 - 1) On the first page, paragraph 2, first sentence delete "any."
 - 2) Second page and somewhere else in the document it says that the seller's title company has no duty to the lender. This should be written down.
 - 3) Wording needs to be added to Page one, paragraph 2, to show we are not acting as agents, but as fiduciaries or delete the last sentence.
 - 4) Paragraph 3, 6th line down it talks about "delegating." Not sure of what can be delegated.
 - 5) Paragraph 8 should be called "Liability." Maybe should just say somewhere in it, "By this agreement at law or in equity."Paul said he would refine this a bit and get all his recommendations to Glen. **Glen will make additional changes for the next meeting.** The department will work on the rule.

VII. New Business

- **Review [SB199S1](#) Division of Real Estate and Title Insurance Related Amendments**

- ❑ Paul reviewed the transfer of the language from HB415, Real Estate Related Transactions and Regulations, to SB199, Division of Real Estate and Title Insurance Related Amendments, during the last few days of the legislature. These changes were represented as technical and as having the backing of the title industry, which it did in part. As a result, the bill was passed without discussion. Brian Brunson spearheaded this move through Representative Dougall. Paul and many others on the Commission expressed concern that this would open the door to fraud and create a flood of requests for

dual licenses. The bill seems to require dual licenses on a case-by-case basis for “each transaction.” The Commission must first approve a dual license request. If the Commission takes no action within 15 days of the application, the application will automatically be approved. Paul thought that a rule would help prevent fraud that the bill opens the door to.

- ❑ Gerri said a disclosure was needed for the application.
- ❑ Curt said that page 10 and 11 of SB199 listed the information to be filed with the dual license application, including:
 - a description of the title product or service;
 - list of principals to receive the product or service;
 - description of the property involved;
 - if consideration is received from principals; and
 - any other information required by rule.
 - The rule should define what the Commission requires. It should protect consumers, the title industry and allow the department to collect needed information.
 - Sheila noted that the department would draft a rule, and then give it to the Commission for their input. Curt suggested it address reciprocal relationships and Dave Moore said it should address the relationship between brokers and agents.
- ❑ Gale is working on a disclosure application, which should be done in a day or two. Gerri asked those with suggestions for the disclosure to email them to her.
- ❑ Glen asked if the compensation had to be commensurate to the services provided. Paul said that RESPA requires it. If paid more, it is a kickback. Our law already requires commensurate compensation.
- ❑ Perri noted that anything in the disclosure should be in the rule. **Perri was asked to attend the rule meeting on Wednesday.**
- ❑ **Perri will have an attorney from the Real Estate Division check into the penalties in the bill.**
- ❑ The department has a list of 48 dual licenses on the books. They are not all affiliated with title agencies. There was some concern that some of the people on the dual licensing list were just certified to teach real estate like Dave Moore.
- ❑ Gerri said that since there was no fiscal note on SB199 the department will need to charge a fee.
- **Update on Combining Marketing Practices into one Rule**

It was agreed that this rule should be tabled for now until other more pressing rules are written for the Commission.
- **Update on Commission Member Replacement Process**

Curt noted that the 31A-2-403(2)(a) states that June 30 is the end of the four-year term, not May 1 as Greg Hartley of the Governor's office thought. Greg said they had not received any applications so far. Curt noted that SB199 changed the requirement regarding the counties to be represented by the Commission.
- **Streamline Investigations**

Glen referred to a couple of cases he submitted to the department, along with proof that title companies had not charged for their service or the policy. He felt there should be a way to streamline the administrative procedures and take action quicker on simple cases where proof is provided.

 - ❑ Curt said the Real Estate Division has a streamlined process for handling such issues as blind ads where evidence is produced. No investigation is needed. Joyce said this would reduce the department's workload.
 - ❑ Darrel said the department needed to be sure everyone is properly notified and given a chance to respond.

- Perri said that once Gale files the action then the Commission could review them in a closed meeting hearing, which should not take long. Gerri noted that our laws are different than the Real Estate Division but it would be nice to do this if possible. Glen asked Perri to check with the Real Estate Division's attorney in her office and see how he or she does it. She agreed. Darrel will also check into it.
- **Re-recording Deeds - Affidavits** / Darwin
- **Cash Transactions & Split Closings** / Darwin

Darwin noted that there was confusion in the marketplace as to whether split closings could be done on a cash transaction. Gerri said you couldn't do a split on cash transactions. Glen said that if you are doing the buyer's side of the cash transaction all one has to do is issue a commitment then can handle the buyer's side on a cash transaction. Paul referred to a letter from Gerri dated March 25, 2004 regarding 31A-23a-406 that required the policy be issued. She stated in the letter that the "department viewed the transaction to be the entire buy sell event. Therefore as long as one title agency issues a policy no violation exists." Gerri said the letter does not apply to splits. Dave asked that this issue be kept on the agenda.
- **Verifying regular meeting date/time/location**

The Liaison meeting will be here at 2 p.m. on April 9. Stay with the second Monday of the month. Glen will check with Backman to see if it is still okay to hold the meetings in their boardroom. The meeting will remain at 9 a.m.

VIII. **Other Business** from Committee Members

IX. **Reminder:** Next Liaison Meeting

X. **Adjourned:** Glen moved to adjourn the meeting and Joyce seconded it. The vote was unanimous – 11:50.

XI. **Next Meeting:** April 9, 2007, 9 a.m.

Next Meetings

9:00 a.m.

April 9	May 14
June 11	July 9
Aug 13	Sept 10
Oct 9	Nov 12
Dec 10	